

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

HOWARD E. MARTIN, III,

Petitioner,

:

v.

Case No. 1:23-cv-205
Judge Sarah D. Morrison
Magistrate Judge Karen L.
Litkovitz

WARDEN, CHILLICOTHE
CORRECTIONAL
INSTITUTION,

:

Respondent.

ORDER

On May 18, 2023, the Magistrate Judge issued a Report and Recommendation recommending that the Court dismiss this case without prejudice to Petitioner Howard E. Martin, III's continued prosecution of his habeas corpus claims in Case No. 2:22-cv-4423. (R&R, ECF No. 3.) The Magistrate Judge explains that Mr. Martin's petition filed in this case is duplicative of the operative petition filed in Case No. 2:22-cv-4423. (*Id.*)

Mr. Martin objects to the Report and Recommendation, and although his Objection is untimely, he explains he only recently received information pertaining to this matter. (Obj., ECF No. 5.) Thus, the Court will consider the merits of Mr. Martin's Objection.

Mr. Martin cites various Federal Rules of Civil Procedure (41(b), which governs involuntary dismissal; 60(b), which governs relief from a judgment or order; 55(a), which deals with default entries). None of these Rules apply. This matter was

not dismissed involuntarily for failure to prosecute or comply with the Rules or a Court order, nor has there been a motion for relief from a final judgment, order, or proceeding. *See* Fed. R. Civ. Pro. 41(b), 60(b). Rule 55(a) does not apply because under Rule 5 of the Rules Governing Section 2254 Cases, a respondent need not answer a petition unless a judge so orders.

Mr. Martin's remaining objections are difficult to decipher. He discusses the prison J-Pay system and allegedly wrongful takings of his intellectual property and clothing. (Obj. PageID 60.)

The Court has analyzed the Report and Recommendation. Mr. Martin's Objection is **OVERRULED** and the Report and Recommendation is **ADOPTED** and **AFFIRMED**. The Court **DISMISSES** this case **without prejudice** to Mr. Martin's continued prosecution of his habeas corpus claims in Case No. 2:22-cv-4423.

The Court also **DENIES** a certificate of appealability, as a reasonable jurist would not debate whether this matter is duplicative. The Court **CERTIFIES** that any appeal of this Court's dismissal would not be taken in good faith, and on that basis **DENIES** Mr. Martin leave to proceed *in forma pauperis* on appeal.

The Clerk is **DIRECTED** to terminate the case.

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON
UNITED STATES DISTRICT JUDGE